MEETING OF THE NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

Raleigh, North Carolina October 11, 2012 Minutes

The North Carolina Environmental Management Commission met in the Ground Floor Hearing Room of the Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina. Chairman, Stephen T. Smith presided. The following persons attended for all or part of the meeting.

COMMISSION MEMBERS PRESENT:

Benne Hutson Marion E. Deerhake Stephen Smith

COMMISSION MEMBERS ATTENDED BY CONFERENCE CALL

Marvin S. Cavanaugh Dr. Ernest W. Larkin J. Dickson Phillips III Clyde "Butch" Smith, Jr.

Marion E. Deerhake Kevin Martin Dr. David Peden Steve W. Tedder

Tom Ellis Jeffrey Morse Dr. Charles H. Peterson

William L. Hall Mayor Darryl D. Moss Amy E. Pickle

DIVISION OF AIR QUALITY: Sheila Holman

DIVISION OF WATER QUALITY: Lois Thomas

ATTORNEY GENERAL'S OFFICE: Frank Crawley

John Payne

BROOKS PIERCE ATTORNEYS & COUNSELORS: George House

Alexander Elkan Ross Smith

SOUTHERN ENVIRONMENTAL LAW CENTER: Derb Carter

Geoff Gisler

I. Preliminary Matters

Chairman Smith: The chairman called to order the call meeting of the North Carolina Environmental Management Commission at 2:05p.m. For those of you on the call if you don't identify my voice I'm Steve Smith.

Mr. Ayers is out of town. Dr. Peden is out of town and could not participate. Mr. Keen is not present.

Chairman Smith: We clearly have a quorum. Thank you all for making arrangements in your schedule and also thanks to all of you in the room for making arrangements in your schedule for this called meeting. For the people on the phone I've been asked to make two requests. First of all that you go off speaker phone and use your handset because being on speaker phone is giving us interesting reverb. Then the other is that you put your phone on mute except when you're speaking.

Chairman Smith: I don't know if you just heard those two requests. I've been asked that all of you take your phones off speaker phone and to put your phones on mute except when you're speaking. Let me say one personal comment and that is that I think all of you probably were present in the room at the conclusion or near conclusion of the last meeting when I fainted. I am pleased to say that I checked out just fine on all fronts. I had let a non work matter, something I can't control worry me too much and I wasn't taking care of myself. I am endeavoring to correct that on an ongoing basis so that I do not put any of us through that again. I thank you very much for those of you that reached out to me with calls, cards, visits, emails or other expressions of concern. They mean a lot to me, and particularly I want to thank Dr. Larkin and Dr. Peden for their prompt response.

With that I'll ask if anyone has a conflict of interest or is aware of a potential conflict of interest please signify at this time.

Amy Pickle: Mr. Chairman, this is Amy Pickle. I will continue to recuse myself from the matter of PTRF and PCS Phosphate.

Chairman Smith: Thank you.

Kevin Martin: Steve, I think we may have had one more call in. I heard a phone ring.

Chairman Smith: Is someone called in that hasn't announced they're present. No answer. Let's see. Mr. Keen had recused himself previously and he's not on the call. There's one third recusal. Mayor Moss had recused himself. I assume, Mayor Moss that continues until we complete the PCS Phosphate matter.

Mayor Moss: Yes sir, that's correct.

Chairman Smith: Any other conflicts or potential conflicts? There were none. As to the matter of PCS Phosphate contested case, after a review of the minutes and the record it's clear that at that meeting before I fainted, I called for a vote. The vote was eight to seven. I chose not to vote. After talking with Mr. Crawley and Dr. Peterson and reviewing the matters that the parties had submitted as to that, I think the better course is to leave that decision. That is the decision that I made not to vote as I made it at the meeting. That leaves the vote on the PCS Phosphate case at 8-7 with the motion by Mr. Morse to affirm the ALJ's order as the decision of the EMC. With that we'll move to the status reports by EMC committee chairs.

III. Status Reports

A. Water Allocation Committee Mayor Darryl Moss, Chairman

The Water Allocation did meet and we had informational items only and I apologize for not having my notes in front of me. But there was nothing to assess for our committee.

B. Water Quality Committee Dr. Charles H. Peterson, Chairman
The Water Quality Committee met last week. We had one item that had to do with a variance
that we acted on. We had two others that came before the Commission that day. I too don't
have my notes in front of me. There was nothing of major importance that won't come up again
before the Commission and everyone will have their chance at it.

The Groundwater Committee did not meet.

C. Air Quality Committee Marion Deerhake, Chairman

The Air Quality Committee met. We had one concept on inspection and maintenance which reflects the new legislature that came out of this most recent session of the General Assembly. We had two draft rules. One for revisions to the New Source Review and Prevention of Significant Deterioration (PSD) Nitrogen Oxides (NOx) significance level for PM2.5 and PM2.5 increment. That was voted to carry forward to the EMC for consideration whether or not to take it out for public comment. The second one in the same situation was revision of Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) Rules Applicability. We had no EMC agenda items on discussion. Then we had information items including the director's remarks regarding the status of the Cross State Air Pollution Rule

(CSAPR) Vacatur, the air toxics legislation stakeholder process sulfur dioxide designations update and the Division of Air Quality budget update.

The Steering Committee did not meet; nor did the NPDES Committee.

D. Renewable Energy Committee Dickson Phillips, Chairman

We did meet and we had a report from staff reviewing the actions the committee took a couple of years ago in recommending some wind energy regulation legislation, and had staff to report back to us on several questions to help us decide whether there is a need and reason to revisit that former action.

Chairman Smith: Thank you sir. Now as for concluding remarks, are there any concluding remarks from Commission members.

Mr. Phillips: We're glad that you are up and about Steve and glad to hear you got a good report. We're all relieved about that.

Chairman Smith: Thank you sir. I appreciate that.

Mr. Morse: I'd like to ask Frank Crawley a quick question. We received in the mail some kind of document from the SELC something about recapping the means of voting of the Roberts Rules. Does that have any bearing on anything we've done?

Frank Crawley: You're speaking about the memoranda concerning voting procedures under Roberts Rules?

Mr. Morse: Yes sir.

Frank Crawley: No. The chairman took care of that matter in his discussion announcement of the vote so there won't be any discussion with respect to Roberts Rules, unless you want to bring it up at a later meeting.

Mr. Morse: Oh no. I remember getting that official document in the mail and I was just wondering if the Commission had to respond to that at all.

Chairman Smith: Mr. Morse I think there were two of those, one by each side that came from the PCS Phosphate counsel and one from the SELC counsel. They were taking positions on the question of whether or not I could vote at this point.

Any other comments by Commission members? I don't see the division directors here.

Anyone on behalf of the division. I do see Ms. Holman. Any comments by division directors?

Hearing none.

Frank Crawley: To my knowledge we won't have any contested cases in November.

Chairman Smith: I will say though we will have a remission case that I've just received today. The department is asking that we hear it in November so you will be receiving the record on one particular remission case. The department asked me and I ask you that even with the short amount of time that you have that we leave that remission case on for us to hear in November. We'll get those materials out to you as quickly as possible.

I want to note for the record that after the call of the roll, Mr. Hall has come in so he's present for this meeting. I have no concluding remarks.

The meeting adjourned at 2:40 p.m.